

LAKE COUNTY BOARD of ADJUSTMENT
May 13, 2020
Lake County Courthouse via ZOOM
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Mary Jensen, Mike McKee

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Tiffani Murphy, Lita Fonda

Don Patterson called the meeting to order at 3:30 pm.

NEWGARD CONDITIONAL USE—STONE RIDGE ESTATE (3:30 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the May 2020 meeting file for staff report.)

Clint clarified that the wastewater treatment system was a community system, as was the well. Condition #7, pg. 3, was for Environmental Health to evaluate the change to see that it was still reasonable. He clarified that the amendment mentioned in condition #4, pg. 2, that the original drawing submitted required a conditional use. The applicant gave a new design plan without the garage and patio and a permit was issued for that portion. He was now asking to put in the garage and additional impervious surface with this application. [The zoning conformance permit would need to be updated for the conditional use.]

Mike asked about a schematic for the garage and patio. Clint pointed to attachment 5 showing the interior floorplan, including the garage. The two concrete patios were on the NE portion. Steve noted they weren't drawn in, and checked with Clint that they were on the east side of the building.

Public comment opened: None offered. *Public comment closed.*

Agent Paul Walhood spoke to the board. He noted the subdivision covenants did not allow for vehicles to sit outside so they needed to have a garage. The other places had variances so they were asking for the same thing.

Motion made by Mike McKee, and seconded by Mary Jensen, to approve the conditional use. Motion carried, all in favor.

ROSE CONDITIONAL USE—FINLEY POINT (3:45 pm)

Tiffani Murphy presented the staff report. (See attachments to minutes in the May 2020 meeting file for staff report.)

Tiffani confirmed for Steve that this was considered a lakefront lot. The lake wrapped around the northern part of the property so it would have that Finley Point setback of 50 feet from the water, which shrunk the buildable area. She clarified that attachment 4 was from 2012 pervious surface calculations whereas the shaded area on attachment 3 was the patio location, facing the lake behind the lodge to the north.

Frank checked that since the existing patio wasn't mortared into place, it was considered a pervious surface. Tiffani agreed. The current patio was big rocks set into dirt and gravel. The proposal was to put those into concrete.

Agent Earl Hanneman said the project had been explained well. They wanted to cement in the rocks, which had a tendency to move a little otherwise. The cement would stabilize those.

Public comment opened: None offered. *Public comment closed.*

Mike and Steve agreed that the cracks between the stones were narrow. It was a small difference between pervious and impervious as it stood.

Motion made by Mike McKee, and seconded by Mary Jensen, to approve the conditional use. Motion carried, all in favor.

MIKULICH CONDITIONAL USES—EAST SHORE (3:58 pm)

Rob Edington presented the staff report. (See attachments to minutes in the May 2020 meeting file for staff report.)

Rob confirmed that the zoning conformance permits were for the use of the travel trailers as temporary dwellings. One was for each lot. The zoning conformance application for the permanent dwelling had not yet been submitted. He'd had that conversation with the agent, who was aware that the cabin needed a zoning conformance permit, and he'd seen plans. Steve was curious if starting the timeline right now would work for the applicant. Frank agreed with Steve. He asked why both conditional use and zoning conformance were needed. Rob explained the conditional use allowed for that use but it was subject to the conditions. The zoning conformance ensured that those conditions were met. They went together. He gave the analogy that you could have a motorcycle endorsement but until you had a driver's license, you still couldn't operate it. The conditional use was like the endorsement. Frank asked if one year was typical in other zones. Rob said the 2 years for the construction period was consistent across all of the zoning districts. Nothing prohibited coming back to the board with another request. It would be treated as a new review. Another option was to use the trailers on a seasonal basis although the zoning required a 6-month removal.

Owner Tom Mikulich described their plans with the property. They hoped to get a pole barn and the septic system in this summer. They would submit for the pole barn when they decided on the location. They hoped to build the cabin next summer. He understood they needed to submit for the cabin itself before the septic system was approved. They were still making decisions on the cabin's style. The trailer was there for the agent to be there in the summer and manage the project. The other trailer held tools and equipment. That one would end up going [away] first.

Agent John Lowry thanked the board. Power and water were in, and septic was submitted. He talked about septic.

Public comment opened: None offered. *Public comment closed.*

Tom replied to Steve that he thought they could get it done in the 2-year timeframe starting now. They could come back to ask for an extension if more time was needed. Frank suggested adjusting condition #9 from 'the date of conditional approval' to 'the commencement of any construction'. Frank and Mary suggested changing the timeframe to 3 years if this was for any construction. Jacob explained that currently the regulations allowed 2 years. The use of the RVs was already ongoing so that's why Rob had worded the condition as it was. If they were to use them after today and didn't start construction for 3 months, then they would be using these in violation during that time. Staff had made the date from today so they would have approval moving forward from this meeting. It was up to the board how they did that but that was why it was written that way. John apologized for being unaware that a permit was needed to have a 5th wheel on the property. Frank withdrew his suggestion. Jacob clarified that an extension would be a new conditional use as there were no provisions for an extension for temporary dwellings. Fees would be \$350.

Motion made by Frank Mutch, and seconded by Mike McKee, to approve the conditional use with findings of fact, terms and conditions. Motion carried, all in favor.

STONE CONDITIONAL USES—FINLEY POINT (4:24 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the May 2020 meeting file for staff report.)

Steve complimented Planning staff on the required vegetation plans and so forth. In #8 on pg. 5, Clint verified for Steve that the vegetative buffer was the 50-foot buffer along the shoreline. He identified for Frank that photo 1 in attachment 6 looked onto the driveway of lot 6. Photo 2 was in the center of the lot. Columbine Lane wasn't pictured.

Public comment opened: None offered. *Public comment closed.*

Agent Nicholas Cole offered to answer questions.

Steve tweaked the findings:

- Pg. 6, #2, 2nd paragraph, 4th line: After 'stormwater plan', replace 'is' with 'and a vegetation plan, including the lakeshore buffer, are'.
- Pg. 8, 2nd line: Add 'a lakeshore vegetative buffer is maintained' after 'managed,'.
- Pg. 8, next-to-last line of #7: Add 'a lakeshore vegetative buffer is maintained' after 'managed'.
- Pg. 9, #6, first line of the first bullet: Add 'along the lakeshore' after 'wide'.

Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the conditional uses with findings and conditions as modified. Motion carried, all in favor.

BUCHANAN CONDITIONAL USES—FINLEY POINT (4:43pm)

Frank Mutch identified that Bruce Buchanan was a distant family member. He chose to recuse himself. His ZOOM camera was turned off. Tiffani Murphy verified that the attendees for this item were checked in and presented the staff report. (See attachments to minutes in the May

2020 meeting file for staff report.) She commented that 2 written comments were received after the staff report deadline and were emailed to the board members today.

For the property lines in attachment 3, Tiffani clarified for Steve that there was a funny jog. A seawall extended for about half of it and then there was a cut in on the northern side. She confirmed that the boundary only went to full pool.

Steve asked about a revegetation plan for the disturbed slopes. Tiffani explained that the zoning regulations didn't necessarily require a revegetation plan. It would be really hard to replant there, given the steepness. It would be left cut like that to build the garage and to have some space to walk around that side. Looking at the site plan provided by the agent, some areas were being resloped where the septic system lines would be disturbed. [Vegetation] would be reestablished there but not [on] the really steep slope behind the garage. Steve referred to comments in the report. The earthwork done in front of the house wasn't included in this. There was also a comment about a berm going on the west side of the driveway that might result in disturbed slopes. Tiffani said they didn't know if those were included in the calculation. The agent had commented about a berm but a stormwater plan hadn't been submitted yet. A condition for a stormwater plan to address those things prior to issuance of a zoning conformance was included. If more slopes were disturbed, they would have to return to the board for an additional conditional use. She clarified that the 898 square feet were for the after the fact disturbance around the garage and the upcoming part of the road to be disturbed for the repaving and to replace the septic system. The driveway berm and stormwater management were not included.

In attachment 1, Mike corrected the address shown from 30327 Borchers Lane to 36607 MT Hwy 35. Regarding the vegetation plan and the hill behind the garage, had there been discussion about a retaining wall along that slope? It seemed like when you cut away a hillside at that angle, the potential for erosion and things happening were great. He pointed to attachment 4. Tiffani replied it could potentially be part of the unsubmitted stormwater management plan. Mike thought it would be a logical thing to consider with a side hill cut like that. Mary observed in the upper left photo of attachment 4 that trees seemed to already be sloughing towards the garage. Some preventative measure was needed. Steve thought the upper right photo appeared to show where a lot of soil from the cut was placed. Would a vegetation plan for that be required? Tiffani responded that vegetation plans were required in the 50-foot and 20-foot buffers. Jacob added that when they had structures where overdig was required for construction, generally afterwards when they backfilled, staff would have them reslope to its original grade and vegetate for stability. In this case, this might be different if the cut was vertical or if they needed additional area for parking. A retaining wall might be a more appropriate way to deal with it. He didn't think they had that information yet. He said that Steve was correct in that when they backfilled, staff generally had them regrade and vegetate for stability. Steve asked if a number of items in this application hadn't been thought through. The board could evaluate if they wanted to continue with this after hearing from the agent and the owner.

Mike commented that within the submission, this was a two-story addition to the existing garage. The garage was in the upper left picture of attachment 4. There was no plan in the materials as to what would be contained and what the design of the addition would be. That was one of the

neighbor concerns. This fell in line with the earlier comment about a lack of completeness for the board to say what the applicants were going to do and how they were going to do it.

Public comment opened:

Tom Lavoie said a large amount of material excavated from the hillside for the proposed garage addition had been piled up next to the garage on the lakeside. He estimated that it was about 2 feet deep. He was concerned that rainwater would now flow onto his property or into the lake. Would that material stay there or be pulled back out?

Public comment suspended to hear from owner and agent:

Owner Bruce Buchanan said the elevation to the right of the garage was already established. It wasn't established all the way. He estimated they added 4 feet of additional space going towards the property line. He thought the elevations shown in attachment 3 were unaltered. The propane tank had sat on it. He intended to put in a short retaining wall to include that material and stabilize that. The drainage came off the front of the property. The paved area was graded towards the stormwater containment. It was in the ground, about 8 feet deep and 6 feet wide. They were talking about a very little bit of additional parking space, done to level the area to the right of the garage in anticipation of the second floor.

Agent Earl Hanneman of Western MT Land Services understood that the driveway would be sloped into the hillside a little. The water would run into that and then down into the tank that was in place. The garage work was done after the application was turned in, which was why they hadn't talked about the stormwater and retaining wall at this point. They were considering measures at this time, until some vegetation could take hold again on the slope-side where that dirt was. He wasn't sure what was planned for the disturbed area but believed it was supposed to be paved. That would all go into that tank. He encouraged Bruce Buchanan to correct him if this was wrong. A few things could be done in the area next to the garage. It could be a riprap stack to hold that hill in place instead of a retaining wall.

Mike said the material dug out of the hillside east of the garage looked like it had been moved to the west side, which appeared now to be a flatter parking area. Bruce confirmed that a well casing was just west of the garage. He talked about dirt that was removed to allow for construction of a support berm for the existing retaining wall. The contract initially for the retaining wall was to haul out 100 yards of dirt, rock and debris so there was about 40 additional yards of material to remove from the site. Some was piled in the lower area. The rest was stacked where the propane tank was, and also in the parking lot. He thought the asphalt was difficult for staff to ascertain because track vehicles had been used to go up and down the driveway to bring [equipment] down, which turned that area into a slathering mess of mud. He brought in 5/8-inch crush to stabilize the dirt there. It was muddy because the water drained into the catch basin for the stormwater. There wasn't much dirt taken out of the hillside. Some sloughing had decreased the amount of that slope. They scraped back into the original cut. There would be an engineered retaining wall for the noted concerns when they were done installing the septic system. He also planned to run a new water line for the upper house. They would know where things were going when the septic design was approved. Until that time, he couldn't really talk to an engineer.

Mike had questions about the proposed septic system location. Tiffani pointed to the proposed drainfield in the property's SE corner. Earl confirmed that it would be pumped up a steep hill. They would cut into the hillside to bury it and then refill and revegetate to avoid sloughing. Bruce said the existing system was the same and they proposed using the same trench. Tiffani noted this was part of the requested slope disturbance. Bruce verified for Steve that the existing system was between the existing house and MT Hwy 35 and that the new drainfield would be south of that. Steve said that looking at the contour lines, it appeared the slope used to be gentler towards the neighbor to the south. It looked like some of that corner had been filled in. Bruce described where they were looking at putting a short retaining wall between that soil and the property line. A previous retaining wall there was caved in by the equipment of the retaining wall people.

Tom LeVoie confirmed for Steve that he was more comfortable with the idea that this retaining wall would happen. Steve explained that a requirement of the stormwater plan was that no stormwater was allowed to run into the lake or onto a neighbor's property. That retaining wall needed to be part of that stormwater plan with some explanation of how the grading was done above that retaining wall to make sure that runoff from this parking area (by the well) drained back towards the owner's property, not Tom LeVoie's. Bruce noted that under the existing situation, it all sloped into Tom's property. This was one reason to stabilize and put in the retaining wall, and it might also present a more picturesque view for Tom than what was there.

Tom asked if the existing nonconforming garage had water or sewer, given the drainage pipe coming out of it. Tiffani replied it was permitted as dry. Bruce said the pipe between the garage and the hillside was a French drain. It fed into the current storm drain system. Tiffani clarified that the garage addition was proposed as a dry structure. Tom asked about where the utilities came and went from the second nonconforming house just off of MT Hwy 35. Earl thought it was the same well and drainfield. Tiffani added that Environmental Health would have to permit the new drainfield, and this was a recommended condition here.

Bruce addressed the Board about the berm, which was actually a curb. He had concerns on the lake side of the driveway. The curb would be poured with the concrete for the driveway. It was not to allow future slope issues, which they currently had. He didn't want to drive anything structural into that hillside. The intent of the curb was to prevent people potentially sliding down the hill from ending up on their side or in the house.

Bruce said the asphalt still existed with the exception of the ruts in the driveway. It was serviced by the existing stormwater control system. The mud and rocks could be quickly cleared away to expose the existing pavement in the parking area. They proposed repaving. They would put concrete where they had structural issues with the ground. They took out a fractured concrete apron pertaining to the expansion of the garage. The edge of that apron was asphalted along with that area. They weren't proposing an increase in the existing impervious area.

Bruce addressed the revegetation plan. Soils weren't disturbed when they removed the elevated deck. He did move the concrete pads that the deck sat on. The area would be graded and ultimately in lawn, as before. Nothing affected the floodplain. The new retaining wall was put

in behind the existing one and was to stop erosion. He intended to maintain the wood façade. The existing retaining wall was collapsing into the lake, with erosion resulting. When construction was done, he intended to revegetate and restore the property. He touched on the septic situation. He intended to fix the septic prior to installing the new driveway and repaving. He referred to Gary Erb's email. The driveway and parking areas continued to be paved, with mud currently on the top and 5/8-inch gravel to stabilize it.

Bruce stressed that he intended to restore the property to its original 'intent', to what it was, including correcting certain structural deficiencies. He talked about steps, repairs and improvements he'd addressed. He hoped the board would allow him to complete that.

Public comment closed.

Mike had looked at the property. It appeared the work being done was to improve the property. He was glad to hear about the new septic further from the lake and so forth. He was now supportive of the project and the request.

Steve felt more confident about the conditional uses. He complimented the planning staff, who would consider a lot of the issues that had come up prior to the issuance of a zoning conformance permit. He gave changes for a condition:

Pg. 10, item #8, in 2nd line and also in 3rd line: Change 'are submitted' to 'must be submitted'.

Motion made by Steve Rosso, and seconded by Mary Jensen, to approve the conditional uses with findings of fact and conditions & terms as modified. Motion carried, 4 in favor (Don Patterson, Steve Rosso, Mary Jensen, Mike McKee).

(A brief period of adjustment regarding board, attendees and ZOOM followed.)

DOBBERMAN CONDITIONAL USE & VARIANCE (5:45 pm)

Rob Edington presented the staff report. (See attachments to minutes in the May 2020 meeting file for staff report.)

Steve asked if the 2-year continuous option [for a temporary dwelling] had been considered. Rob thought in part [the seasonal option was chosen] because plans had changed and they were here seasonally. The applicant could address this further, along with the timeframe and likelihood of delays. He confirmed this had been an ongoing temporary use without a permit.

Public comment opened:

Applicant Eric Dobberman related that they purchased the property in 2007, with the intent to tear down and rebuild. He related events that delayed this plan. They put a pull-trailer on the lot around that time and were ignorant that they needed a zoning permit for a temporary structure. He pointed to the permitted wall and dock, and approved septic and well. They planned to do the build this year. When the corona virus hit, their cash reserves went back into their business again. They used the trailer for 5 or 6 weeks per year. It was open for 6 months and then covered. Water came from the lake through deeded lake rights through the Tribes. Rainbow

Septic pumped it out. Things were in place except for the money to build. His wife had been on the lake for over 50 years and they wanted to get this done for their retirement home.

Steve asked if a septic pump truck could reach the trailer via the access road to clean out the holding tank, and if construction equipment and materials could get down the driveway. Eric replied that the septic had been done for 14 years. The worst case scenario with the building materials was that they would use a barge.

Steve Daniel spoke on behalf of the Marie Daniel Estate, which bordered the subject property on the east side. They had no objection to giving the Dobbermans the opportunity to get their home built. Their concern was that a variance would be given that would end up being permanent, particularly if the Dobbermans were to sell the property down the road.

Rob clarified that the variance went with the property but the board could choose to have the variance expire with the change in ownership. This was done with zoning conformance permits for vacation rentals. He would do it in such a manner that if the Dobbermans changed from one trust to another, it wouldn't expire. Jacob said a variance usually ran with the land. This was an unusual circumstance in that it was tied to a use, where generally uses weren't varied. He thought it would be appropriate to condition the approval to expire on change of ownership, if the board chose to do so. This would be a good and appropriate time to handle that. It was up to the board. Steve thought the other option would be to have it sunset in something like 5 years. Jacob noted that the reason to review these special circumstances was to mitigate impacts that there might be to adjacent neighbors or the environment. If there were concerns about this going on without a sunset, it would be appropriate to address that during this approval.

Frank suggested using 10 years or at the change of ownership. When asked for comments, Eric said that was wonderful, anything they could do to help them get through this time of corona virus. He reviewed again some history and accomplishments they'd had with the property. If it expired with the sale of the property, he would certainly be happy with that. Steve asked whether the 5 year or 10 year option would be plenty of time. Eric thought that 5 years with a review of this magnitude again [was acceptable]. With corona, it was hard to say. Steve suggested using 5 years or the change of ownership. Frank suggested splitting the difference. Don thought 5 years would be fine.

Jacob shared language that was used last year for Swan Sites that addressed seasonal use, with the board's encouragement: 'On a seasonal basis provided that the structure is not occupied for more than 6 months, the temporary dwelling must be unoccupied for at least 30 days to reactivate a new 6-month period.' This situation was similar. When a camper in Swan Sites was not in use, it was considered to be stored. It didn't have to be removed; it just had to be unoccupied. Frank liked that, and liked that it was in line with another district for standardizing down the road. The intent was that it didn't become a permanent residence.

Rob pointed to pg. 12, condition #3. Jacob thought Rob's recommended condition #3 was more appropriate at this point than the one in Swan Sites because it was more consistent with what the Finley Point zoning already said. With the recommended condition, it couldn't be used as a residence, given the 6 months before they could start a new season.

Eric talked about how they closed, covered and winterized it the last handful of years. He had no problem with covering it up for 6 months. He'd been told the construction crew wouldn't need a trailer because they had family in the area. It was moot to them. He thought the Daniels closed and opened about the same time that the Dobbermans did.

Steve and Frank looked to add something so this would expire with the transfer of ownership. Jacob made a recommendation for the wording:

Pg. 12, condition #3: Add 'This approval expires upon transfer of ownership.'

Steve gave some corrections:

Pg. 7, last paragraph, 5th line: Add 'of,' after 'adequately disposed'.

Pg. 8, first line: Change 'quality on' to quality or'.

Pg. 8, 4.vi: Add 'of,' after 'adequately disposed'.

Pg. 10, item e, first line: Remove 'the' prior to 'approving'.

Pg. 11, f.vi, first line: Add 'of,' after 'adequately disposed'.

Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the conditional use and variance with findings of fact as corrected and conditions as modified. Motion carried, all in favor.

MINUTES (6:23 pm)

Oct. 10, 2018:

Motion made by Steve Rosso, and seconded by Mary Jensen, to approve the Oct. 10, 2018 meeting minutes as written. Motion carried, 4 in favor (Don Patterson, Frank Mutch, Steve Rosso, Mary Jensen) and one abstention (Mike McKee).

April 8, 2020:

Motion made by Frank Mutch , and seconded by Mary Jensen, to approve the April 8, 2020 meeting minutes as written. Motion carried, all in favor.

OTHER BUSINESS (6:25 pm)

None.

Don Patterson, chair, adjourned the meeting at 6:25 pm.